

Paul L. Alaga, SBN 221165
Edward M. Higginbotham, SBN 231636
J. Bennett Workman, SBN 287066
BRYANT LAW GROUP, LLP
885 Bryant Street, 2nd Floor
San Francisco, CA 94103
(415) 581-0885 Tel
(415) 581-0887 Fax

Attorneys for Plaintiffs

ELECTRONICALLY
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Superior Court of California,
County of San Francisco

12/09/2024
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Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

CGC-24-620467

EMILY ADDIE; MARIA CHRISTIANA
BENDANA; JESSICA BENSON; LEMONIER
DILLARD; KEVIN DEFILIPPO; JAMES
DUFFY; DANIELLE EDWARDS; ANTHONY
FORD; MICHELLE GUIDISH; WALLACE
HARRIS; CARLOS HERNANDEZ; LONNIE
HOLDEN; MAGEB HUSSAIN; STEPHANIE
LAUREN HUSTON; THOMAS ISAAC;
NICHOLAS JACOBS; MICHAEL
KELLOUGH; JEFFREY MACK; JANIE SUE
MACLIN; SHAWAN PAUL MACLIN;
VANESSA JOE MOORE; JOHN NELSON;
PATRICIA ODERIO-COVETTI; RYAN
PALMER; SHAWANA REED; MIA I.
SALVAGGIO; EDDIE THOMAS III;
NICHOLAS THOMAS, JR.; ROBERT C.
VELA JR.; and, DANITA WILLIAMS,

Plaintiffs,

v.

DIPAK PATEL; 439 O'FARRELL ST. LLC;
TENDERLOIN HOUSING CLINIC, INC.; and,
DOES 1-50,

Defendants.

CASE NO. _____

COMPLAINT FOR DAMAGES

- 1. Violation Of San Francisco
Administrative Code § 37.10**
- 2. Violation Of San Francisco
Administrative Code § 37.11**
- 3. Violation Of Statute (Civil Code §§
1941.1, 1941.3, 1942.4, Health & Safety
Code 17920.3)**
- 4. Violation Of Health And Safety Code §
13260**
- 5. Retaliation In Violation of Statute (Civil
Code 1942.5)**
- 6. Unfair Business Practices In Violation
Of Bus. & Professions Code § 17200**
- 7. Breach Of Contract**
- 8. Breach Of the Implied Warranty of
Habitability**
- 9. Negligence**
- 10. Nuisance**

—JURY TRIAL DEMANDED—

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2. Further, PLAINTIFFS' damages were suffered exclusively within the jurisdictional area of the City and County of San Francisco.

THE PARTIES

4. Plaintiff EMILY ADDIE, at all relevant times was a resident of The Winton Hotel located at 445 O'Farrell Street, San Francisco, California 94102 (hereinafter "WINTON HOTEL") in Unit 203, from April 2024 to the present.

6. Plaintiff JESSICA BENSON, at all relevant times was a resident of the WINTON HOTEL in Unit 422, from 2017 through 2022.

7. Plaintiff KEVIN DEFILIPPO, at all relevant times was a resident of the WINTON HOTEL in Unit 406, from August 2024 to the present.

8. Plaintiff LEMONIER DILLARD, at all relevant times was a resident of the WINTON HOTEL in Unit 204, from August 2023 to the present.

9. Plaintiff JAMES DUFFY, at all relevant times was a resident of the WINTON HOTEL in Unit 217, from 2019 to the present.

10. Plaintiff DANIELLE EDWARDS, at all relevant times was a resident of the WINTON HOTEL in Unit 208, from August 2021 to the present.

11. Plaintiff ANTHONY FORD, at all relevant times was a resident of the WINTON HOTEL in Unit 223, from March 2003 to the present.

12. Plaintiff MICHELLE GUIDISH, at all relevant times was a resident of the WINTON HOTEL in Unit 216, from August 2020 to the present.

13. Plaintiff WALLACE HARRIS, at all relevant times was a resident of the WINTON HOTEL in Unit 226, from 2009 to the present.

1 14. Plaintiff CARLOS HERNANDEZ, at all relevant times was a resident of the WINTON
2 HOTEL in Unit 308, from 2019 to the present.

3 15. Plaintiff LONNIE HOLDEN, at all relevant times was a resident of the WINTON
4 HOTEL in Unit 321, from February 2024 to the present.

5 16. Plaintiff MAGEB HUSSAIN, at all relevant times was a resident of the WINTON
6 HOTEL in Unit 314, from 2021 to the present.

7 17. Plaintiff THOMAS ISAAC, at all relevant times was a resident of the WINTON HOTEL
8 in Unit 311, from August 2020 to the present.

9 18. Plaintiff STEPHANIE LAUREN HUSTON, at all relevant times was a resident of the
10 WINTON HOTEL in Unit 211, from September 2024 to the present.

11 19. Plaintiff NICHOLAS JACOBS, at all relevant times was a resident of the WINTON
12 HOTEL in Unit 215, from December 2022 to the present.

13 20. Plaintiff MICHAEL KELLOUGH, at all relevant times was a resident of the WINTON
14 HOTEL in Unit 400, from 1997 to the present.

15 21. Plaintiff JEFFREY MACK, at all relevant times was a resident of the WINTON HOTEL
16 in Unit 415, from 2022 to the present.

17 22. Plaintiff JANIE SUE MACLIN, at all relevant times was a resident of the WINTON
18 HOTEL in Unit 322, from August 2023 to the present.

19 23. Plaintiff SHAWAN PAUL MACLIN, at all relevant times was a resident of the
20 WINTON HOTEL in Unit 322, from August 2023 to the present.

21 24. Plaintiff VANESSA JOE MOORE, at all relevant times was a resident of the WINTON
22 HOTEL in Unit 212, from August 2023 to the present.

23 25. Plaintiff JOHN NELSON, at all relevant times was a resident of the WINTON HOTEL in
24 Unit 423, from 2021 to the present.

25 26. Plaintiff PATRICIA ODERIO-COVETTI, at all relevant times was a resident of the
26 WINTON HOTEL in Unit 306, from February 2020 to the present.

27 27. Plaintiff RYAN PALMER, at all relevant times was a resident of the WINTON HOTEL
28 in Unit 316, from 2021 to 2023.

1 28. Plaintiff SHAWANA REED, at all relevant times was a resident of the WINTON
2 HOTEL in Unit 219, from January 2020 to the present.

3 29. Plaintiff MIA I. SALVAGGIO, at all relevant times was a resident of the WINTON
4 HOTEL in Unit 201, from October 2023 to the present.

5 30. Plaintiff EDDIE THOMAS III, at all relevant times was a resident of the WINTON
6 HOTEL in Unit 228, from 2019 to the present.

7 31. Plaintiff NICHOLAS THOMAS, JR., at all relevant times was a resident of the WINTON
8 HOTEL in Unit 229, from 2018 to the present.

9 32. Plaintiff ROBERT C. VELA JR., at all relevant times was a resident of the WINTON
10 HOTEL in Unit 218, from September 2022 to the present.

11 33. Plaintiff DANITA WILLIAMS, at all relevant times was a resident of the WINTON
12 HOTEL in Unit 202, from 2019 to the present.

13 34. PLAINTIFFS, and each of them, (collectively referred to hereinafter as “PLAINTIFFS”)
14 are all above the age of majority, and, at all relevant times, were residents of the City and County
15 of San Francisco.

16 35. Defendant Dipak Patel (“PATEL”) is a natural person and was at all relevant times, the
17 sole member and manager of Defendant WINTON LLC.

18 36. Defendant 439 O’Farrell St. LLC (hereinafter, “WINTON LLC”) was the owner of the
19 WINTON HOTEL at all relevant times in this Complaint.

20 37. Defendant Tenderloin Housing Clinic, Inc., (“THC”) was the property manager for the
21 WINTON HOTEL at all relevant times in this Complaint and has its business headquarters at
22 126 Hyde St., San Francisco, CA 94102.

23 38. Defendants PATEL, WINTON LLC and DOES 1-50 hired Defendant THC to manage
24 the WINTON HOTEL.

25 39. Defendants PATEL, WINTON LLC, THC and DOES 1-50 are collectively referred to as
26 DEFENDANTS.

27 40. The true names and capacities of the DEFENDANTS sued as Does are unknown to
28 PLAINTIFFS.

1 41. Once PLAINTIFFS became aware of the true names and capacities of DEFENDANTS
2 sued as Does, PLAINTIFFS will amend the Complaint to reflect the true names and capacities of
3 those DEFENDANTS.

4 42. In committing the acts complained here, each DEFENDANTS, acted as an authorized
5 agent, employees or other representatives of each other DEFENDANTS.

6 43. Each act of each Defendant complained of herein was committed within the scope of the
7 said agency, employment, or other representation.

8
9 **FACTUAL ALLEGATIONS**

10 44. This complaint arises out of PLAINTIFFS' residence at the WINTON HOTEL.

11 45. DEFENDANTS, and each of them, have a lengthy history of building code violations of
12 the sort alleged herein and on that account were aware of their legal duties as landlords.

13 46. Prior to and concurrent with the events giving rise to this suit DEFENDANTS, and each
14 of them, have been the subject of multiple enforcement actions brought by the City of San
15 Francisco and the People of the State of California.

16 47. DEFENDANTS, and each of them, have deliberately neglected their legal duties and
17 obligations in connection with their buildings as a calculated business decision.

18 48. DEFENDANTS, and each of them, have a pattern and practice of renting units to low-
19 income individuals with a limited understanding of their legal rights as tenants.

20 49. DEFENDANTS, and each of them, rely on procuring tenants through government
21 subsidy contracts.

22 50. This pattern and practice was not happenstance but was a calculated decision to prey
23 upon a population with limited resources who on that account would lack the ability to guard
24 their legal interests.

25 51. Only by developing a tenant base of vulnerable individuals could DEFENDANTS, and
26 each of them, so flagrantly and outrageously flaunt their most basic obligations under State and
27 Local law in the fashion alleged herein.

1 52. DEFENDANTS' business model depended on their tenants being unable to assert their
2 rights.

3 53. Further, DEFENDANTS' business model relies on a continuous stream of vulnerable
4 tenants whom they exploit in a calculated fashion to achieve both market advantage and ready
5 access to capital to expand their business empire, as further detailed herein.

6 54. At the time PLAINTIFFS, and each of them, entered possession of their respective units
7 on the WINTON HOTEL and thereafter during the PLAINTIFFS' tenancies, there existed and
8 continued to exist certain defects in the WINTON HOTEL which rendered the WINTON
9 HOTEL uninhabitable for occupancy.

10 55. PLAINTIFFS did not cause these defects, which include, but are not limited to the
11 following:

- 12 • Infestation of roaches;
- 13 • Infestation of mice;
- 14 • WINTON HOTEL of black mold in Common Restrooms>Showers and
15 Tenant Rooms;
- 16 • Unsanitary bathrooms including clogged toilets and non-functioning toilets
17 throughout the building;
- 18 • Water dripping from ceiling indicating leaking plumbing and water
19 intrusion;
- 20 • Hazardous and defective plumbing installations of fixtures that allow severe,
21 toxic, mold growth;
- 22 • Most units do not have carbon monoxide detectors or working smoke
23 detectors;
- 24 • Lack of safety protocols that allow unaccompanied residents to enter the
25 WINTON HOTEL, some of which are drug users and drug dealers;
- 26 • Infestation by mice, rats, and bed bugs;
- 27 • Inoperable heat;

- Mold present on mattresses provided by DEFENDANTS, and each of them, for use by PLAINTIFFS;
- Inoperable pipes and waste water elimination;
- Unlawful rent increases and collection practices.

56. These conditions at the WINTON HOTEL exist through the present day without abatement, beginning at least 10 years prior to the filing of this Complaint.

57. PLAINTIFFS, and each of them, suffered continuous habitability defects at the WINTON HOTEL.

58. PLAINTIFFS notified DEFENDANTS, and each of them, of each habitability and other tenantable issues, but were met with derision, harassment, insults, threats of eviction, and, ultimately, a total failure to remediate any issues present on the property.

59. DEFENDANTS were directly responsible for the issues present and failed to remediate them.

60. The issues at the WINTON HOTEL included DEFENDANTS' failures to maintain the common bathrooms, where vomit, fecal matter and urine would be left uncleaned.

61. The common area showers were riddled with human bodily waste and the diseases that come therefrom.

62. Due to the unsanitary nature of the common areas and common bathroom facilities, gnats, flies, and cockroaches infested the WINTON HOTEL and every one of PLAINTIFFS' units.

63. Due to the unsanitary nature of the common areas and common bathroom facilities rats and rodents infested the WINTON HOTEL and every one of PLAINTIFFS' units.

64. Due to the unsanitary nature of the WINTON HOTEL, bed bugs infestations were routine and on-going.

65. The common bathrooms, which included showers for all tenants to share, routinely backed up, leading to standing water that could not be eliminated through the PREMISE's pipes.

66. In individual units, PLAINTIFFS suffered failures of the plumbing for their sinks, requiring PLAINTIFFS to use buckets filled with water to take place of having a working sink.

67. DEFENDANTS, and each of them, prohibited PLAINTIFFS from placing fans in their windows to help eliminate stagnant air and to cure mold, mildew, and other problems caused by DEFENDANTS, and each of them, through their failures to remediate plumbing, heating, and other issues.

68. PLAINTIFFS individually suffered numerous health conditions brought about by the conditions at the WINTON HOTEL, including skin infections and irritations, and including hospitalization caused by illness caused by detritus and offal and waste covering the common areas of the WINTON HOTEL.

69. In addition, the elevators were continuously inoperable during the relevant times and DEFENDANTS failed to adequately and competently repair them.

70. Doors to individual PLAINTIFFS' units were held on by tape, which DEFENDANTS, and each of them, refused or failed to repair.

71. The WINTON HOTEL was so poorly maintained by DEFENDANTS that at one point a ceiling collapsed and remained unrepaired.

72. DEFENDANTS' staff at the WINTON HOTEL would steal PLAINTIFFS' belongings, either in their respective units and in the mail.

73. Further, DEFENDANTS were aware of violent behavior and thefts occurring by various person at the WINTON HOTEL, and knowingly refused to cure the issues.

74. Rather than remove the violent individuals or thieves, DEFENDANTS would relocate PLAINTIFFS to different rooms within the WINTON HOTEL, or to different buildings owned by DEFENDANT PATEL.

75. DEFENDANTS would not remove the tenants who would conduct the assaults towards PLAINTIFFS but would move them to another unit knowing that this failed to cure any danger presented to PLAINTIFFS.

76. PLAINTIFFS repeatedly informed DEFENDANTS, and each of them, that DEFENDANTS' staff at the WINTON HOTEL were entering PLAINTIFFS' units unlawfully, engaged in theft of PLAINTIFFS' personal property, and when PLAINTIFFS complained of the thefts, DEFENDANTS' responded by harassing them.

1 77. PLAINTIFFS repeatedly informed DEFENDANTS, and each of them, by and through
2 DEFENDANTS' agents, employees or representatives, that the WINTON HOTEL were
3 dilapidated and suffering the above habitability and safety issues.

4 78. DEFENDANTS refused to cure any of the issues, electing instead to harass
5 PLAINTIFFS, threaten them with evictions, or transfer PLAINTIFFS to new units or properties
6 against their wishes and for the purpose of concealing or otherwise intentionally and maliciously
7 avoiding curing these issues.

8 79. DEFENDANTS, and each of them, repeatedly threatened evictions against PLAINTIFFS
9 and other tenants for raising the habitability, safety, and theft concerns detailed above.

10 80. DEFENDANTS and the WINTON HOTEL were the subject of an Abatement Order
11 issued by the City and County of San Francisco on February 17, 2022 for, in part, pest
12 infestations, including roaches and mice, and damaged carpeting, which DEFENDANTS failed
13 to remediate until September 17, 2024, two years and 7 months after issuance of the Order.

14 **Notices of Violation Issued by San Francisco**

15 81. DEFENDANTS received at least 186 complaints, including issuance of Notices of
16 Violation (hereinafter, "NOV" or "NOVs"), since 2014 alone, related specifically to habitability
17 and other issues at the WINTON HOTEL property.

18 82. Complaints by tenants and PLAINTIFFS led to dozens of inspections of the WINTON
19 HOTEL.

20 83. The San Francisco Department of Building Inspections inspected the WINTON HOTEL
21 on multiple occasions.

22 84. The following complaints from 2024, and which are not exhaustive, but which are
23 representative of the dilapidated condition that has existed at the WINTON HOTEL since at least
24 2014, when DEFENDANTS PATEL, WINTON LLC and DOES 1-50 took ownership:

- 25 • February of 2024: Residence/Dwelling plumbing leaks, insects/rodents,
26 leaking fixtures and "other plumbing" issues under Complaint No.
27 202420032.

- April of 2024: dryer vent detached from wall which showed extreme “black exhaust stains emitting from the disconnected vent onto the wall, under Complaint No. 202421783.
- May of 2024: noting only “7 showers for 100 tenants”, with the showers on the 4th floor “be[ing] out of service for over 5 weeks and the management is not fixing them or responding”, with the working showers having scalding hot water that could not be lowered in temperature, with the shower water leeching into the hallways, under Complaint No. 202423945.
- June of 2024: Sewage leaking into the lobby, coming from the ceiling above the lobby and the unit in that location, under Complaint No. 202424932.
- June of 2024: the WINTON HOTEL is a 4 story building with no working elevators for “at least 3 weeks”, under Complaint No. 202425182.
- July of 2024: mold “approximately 4ft x 6in high in the bathroom”, with the top of the ceiling showing “water bubbles”, under Complaint No. 202426267.
- September of 2024: water in the common showers not draining, “water is backing up inside the room ... bathrooms are not clean, there’s blood and feces on the walls and floor”, under Complaint No. 202428286.

85. The above items are part of a longstanding line of failures by DEFENDANTS, and each of them, at the WINTON HOTEL.

86. Specifically, the San Francisco Department of Building Inspection documented the elevators were also broken for weeks at a time in 2023; documented the horrific “stench of death” coming from at least one unit in the same year; documented the total lack of heat and the constant failure of the heating systems and/or boilers; documented electrical water shock hazards from water leaks throughout the building.

87. These issues stem back to at least 2014, when DEFENDANTS PATEL, WINTON LLC and DOES 1-50 took over ownership of the WINTON HOTEL.

1 88. Each NOV here was received during the management of the properties by DEFENDANT
2 THC and DOES 1-50, who managed the WINTON HOTEL at the direction of DEFENDANT
3 PATEL, WINTON LLC, and DOES 1-50, from at least 2014 to the present.

4
5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF SAN FRANCISCO ADMINISTRATIVE CODE § 37.10**

7 **(By All PLAINTIFFS As Against All DEFENDANTS)**

8 89. The allegations of the above paragraphs are and incorporated herein by this reference as
9 if fully set forth herein.

10 90. Section 37.10B of the San Francisco Administrative Code prohibits landlords or their
11 agents from engaging in certain conduct in bad faith. Those prohibited acts include:

- 12 • Interrupt, terminate or fail to provide housing services required by contract
13 or by State, County or local housing, health or safety laws;
- 14 • Fail to perform repairs and maintenance required by contract or by State,
15 County or local housing, health or safety laws;
- 16 • Fail to exercise due diligence in completing repairs and maintenance once
17 undertaken or fail to follow appropriate industry repair, containment or
18 remediation protocols designed to minimize exposure to noise, dust, lead,
19 paint, mold, asbestos, or other building materials with potentially harmful
20 health impacts;
- 21 • Interfere with a tenant's right to quiet use and enjoyment of a rental housing
22 unit as that right is defined by California law;
- 23 • Other repeated acts or omissions of such significance as to substantially
24 interfere with or disturb the comfort, repose, peace or quiet of any person
25 lawfully entitled to occupancy of such dwelling unit and that cause, are
26 likely to cause, or are intended to cause any person lawfully entitled to
27 occupancy of a dwelling unit to vacate such dwelling unit or to surrender or
28 waive any rights in relation to such occupancy."

1 91. In addition to their failure to remediate the above-listed problems, DEFENDANTS failed
2 to provide housing services as required by the lease and by Section 37.10B.

3 92. Further, DEFENDANTS failed to perform repairs and maintenance, as well as exercise
4 due diligence in completing repairs and maintenance, as they are required to do under the lease
5 and by Section 37.10B.

6 93. The above acts were committed in bad faith, without innocent motive and for reasons
7 unrelated to lawful management of the UNIT.

8 94. Pursuant to Section 37.10B(c)(5), PLAINTIFFS are entitled to damages for each and
9 every of DEFENDANTS' municipal code violations, detailed hereinabove, in the amount of not
10 less than three (3) times PLAINTIFFS' actual damages or damages in the sum of \$1,000.00 per
11 violation, whichever is greater.

12 95. As a result of DEFENDANTS' violations, PLAINTIFFS were required to retain legal
13 counsel to enforce his legal rights.

14 96. DEFENDANTS' acts were the direct and proximate cause of harm to PLAINTIFFS, in
15 amounts to be proven at trial.

16 97. Wherefore PLAINTIFFS pray for the damages stated below.
17

18 **SECOND CAUSE OF ACTION**

19 **VIOLATION OF SAN FRANCISCO ADMINISTRATIVE CODE § 37.11A**

20 **(By All PLAINTIFFS As Against All DEFENDANTS)**

21 98. The allegations of the above paragraphs are and incorporated herein by this reference as
22 if fully set forth herein.

23 99. San Francisco Administrative Code Section 37.11A prohibits landlords or their agents
24 from engaging in certain conduct, including without limitation the charging of rent in amounts
25 exceeding the limitations set forth in Chapter 37 and acting to prevent a tenant from acquiring
26 rights under Chapter 37.

27 100. DEFENDANTS violated Section 37.11A by interfering with PLAINTIFFS' quiet
28 enjoyment as described hereinabove, the legal result of which was a reduction of services

amounting to an unlawful rent increase in violation of Section 37.11 and an involuntary surrender by PLAINTIFFS of certain rights arising under Chapter 37.

101. DEFENDANTS' violations constitute a nonconforming rent increase under the Residential Rent Stabilization and Arbitration Ordinance.

102. As a result of DEFENDANTS' violations, PLAINTIFFS were required to retain legal counsel to enforce his legal rights.

103. PLAINTIFFS are therefore entitled to recover the amounts of rent constituting a nonconforming rent increase under Chapter 37, and to recover the reasonable attorney fees incurred in so doing.

104. Wherefore PLAINTIFFS pray for the damages stated below.

THIRD CAUSE OF ACTION

VIOLATION OF STATUTES UNDER CIVIL CODE SECTIONS 1941.1, 1941.3, 1942.4, AND HEALTH AND SAFETY CODE SECTION 17920.3

(By All PLAINTIFFS As Against All DEFENDANTS)

105. The allegations of the above paragraphs are and incorporated herein by this reference as if fully set forth herein.

106. The laws of the State of California, including but not limited to California Civil Code §§ 1941.1, 1941.3 and Health & Safety Code § 17920.3 require DEFENDANTS to provide and maintain habitable WINTON HOTEL for PLAINTIFFS. By their acts and omissions as alleged hereinabove, DEFENDANTS, and each of them, violated Civil Code §§ 1941, 1941.3 and Health and Safety Code §17920.3.

107. In so doing, DEFENDANTS caused and proximately caused the damages and injuries to PLAINTIFFS complained of herein, entitling PLAINTIFFS to damages according to proof.

108. Further, DEFENDANTS were informed in writing by a public officer or employee who is responsible for the enforcement of housing laws of the above-enumerated dilapidations and substandard conditions; the conditions existed and were not abated 35 days beyond date of service of the public officer's notice, and were not cause by acts or omissions of the tenants.

1 109. As such, PLAINTIFFS are entitled to an award of special damages and the cost of their
2 reasonable attorney fees as detailed in Civil Code § 1942.4.

3 110. DEFENDANTS committed the acts alleged herein maliciously, fraudulently and
4 oppressively, with the wrongful intention of harassing PLAINTIFFS, from an improper and evil
5 motive amounting to malice, and in conscious disregard of PLAINTIFFS' rights and safety.

6 111. PLAINTIFFS are therefore entitled to recover punitive damages from DEFENDANTS in
7 an amount according to proof.

8
9 **FOURTH CAUSE OF ACTION**

10 **AS TO ALL DEFENDANTS — VIOLATION OF**
11 **HEALTH & SAFETY CODE § 13260 ET. SEQ.**

12 **(By All PLAINTIFFS As Against All DEFENDANTS)**

13 112. The allegations of the above paragraphs are and incorporated herein by this reference as
14 if fully set forth herein.

15 113. California Health and Safety Code § 13260, *et seq.* obligates DEFENDANTS to install a
16 carbon monoxide alarm device in each dwelling unit intended for human occupancy on or before
17 January 1, 2013.

18 114. DEFENDANTS failed to install such devices on the WINTON HOTEL, and have not
19 done so.

20 115. PLAINTIFFS are entitled to an award of actual damages of up to \$ 100, exclusive of
21 court costs and attorney fees, according to proof.

22
23 **FIFTH CAUSE OF ACTION**

24 **AS TO ALL DEFENDANTS — RETALIATION IN VIOLATION OF**
25 **CIVIL CODE § 1942.5**

26 **(By All PLAINTIFFS As Against All DEFENDANTS)**

27 116. The allegations of the above paragraphs are and incorporated herein by this reference as
28 if fully set forth herein.

1 117. California Civil Code § 1942.5 makes it unlawful for a landlord to retaliate against
2 tenants who complain about their housing tenantability with threats of eviction, causing a tenant
3 to quit involuntarily, increasing the rent, or decreasing any services.

4 118. By their acts, DEFENDANTS violated Civil Code § 1942.5, and did so in a fashion that
5 was fraudulent, oppressive, and malicious; PLAINTIFFS are entitled to an award of damages
6 according to proof, to an award of punitive damages, and to an award of their reasonable attorney
7 fees.

8
9 **SIXTH CAUSE OF ACTION**

10 **(AS TO ALL DEFENDANTS — UNFAIR BUSINESS PRACTICES IN**
11 **VIOLATION OF B&P § 17200**

12 **(By All PLAINTIFFS As Against All DEFENDANTS)**

13 119. The allegations of the above paragraphs are and incorporated herein by this reference as
14 if fully set forth herein.

15 120. California Business & Professions Code § 17200 makes it unlawful to engage in
16 unlawful, unfair or fraudulent business acts or practices.

17 121. By the acts and omissions alleged hereinabove, DEFENDANTS engaged in business acts
18 and practices which were variously unlawful, unfair, and fraudulent.

19 122. PLAINTIFFS are entitled to the restoration of monies taken from them by these unlawful,
20 unfair, and fraudulent business practices.

21
22 **SEVENTH CAUSE OF ACTION**

23 **BREACH OF CONTRACT**

24 **(By All PLAINTIFFS As Against All DEFENDANTS)**

25 123. The allegations of the above paragraphs are and incorporated herein by this reference as
26 if fully set forth herein.

27 124. In committing the acts complained of above, DEFENDANTS breached the terms of the
28 rental agreements obligating them to provide WINTON HOTEL fit for Plaintiff's residential use.

1 125. PLAINTIFFS performed their part of the agreement in paying their rent.
2 DEFENDANTS' performance was not excused.

3 126. DEFENDANTS' breach gave rise to damages which PLAINTIFFS are entitled to
4 recover.

5
6 **EIGHTH CAUSE OF ACTION**

7 **AS TO ALL DEFENDANTS — BREACH OF THE IMPLIED**
8 **WARRANTY OF HABITABILITY**

9 **(By All PLAINTIFFS As Against All DEFENDANTS)**

10 127. The allegations of the above paragraphs are and incorporated herein by this reference as
11 if fully set forth herein.

12 128. By renting the WINTON HOTEL to PLAINTIFFS, DEFENDANTS impliedly warrant to
13 provide and maintain those WINTON HOTEL in a habitable condition. DEFENDANTS
14 therefore owed a legal duty to PLAINTIFFS to provide and maintain habitable WINTON
15 HOTEL.

16 129. By committing the acts and omissions complained of above, DEFENDANTS breached
17 their duty.

18 130. DEFENDANTS, breach of their legal duty caused, and proximately caused, the damages
19 to PLAINTIFFS complained of above.

20 131. As a proximate result of DEFENDANT's unlawful acts against PLAINTIFFS,
21 PLAINTIFFS have suffered and continues to suffer damages in an amount according to proof.

22 132. DEFENDANTS committed the acts alleged herein maliciously, fraudulently and
23 oppressively, with the wrongful intention of harassing PLAINTIFFS, from an improper and evil
24 motive amounting to malice, and in conscious disregard of PLAINTIFFS' rights and safety;
25 PLAINTIFFS are therefore entitled to recover punitive damages from DEFENDANTS.

26 //

27 //

1 **NINTH CAUSE OF ACTION**

2 **NEGLIGENCE**

3 **(By All PLAINTIFFS As Against All DEFENDANTS)**

4 133. The allegations of the above paragraphs are and incorporated herein by this reference as
5 if fully set forth herein.

6 134. DEFENDANTS by their relationship as landlords owed a duty of care to PLAINTIFFS.
7 DEFENDANTS by the acts and omissions detailed above breached their duty of care to
8 PLAINTIFFS.

9 135. DEFENDANTS' breach of their duty of care directly and proximately caused the
10 damages, entitling PLAINTIFFS to recover damages according to proof.

11
12 **TENTH CAUSE OF ACTION**

13 **NUISANCE**

14 **(By All PLAINTIFFS As Against All DEFENDANTS)**

15 136. The allegations of the above paragraphs are and incorporated herein by this reference as
16 if fully set forth herein.

17 137. Installation of carbon monoxide monitors is a requirement of the California Health &
18 Safety code § 13260 and local law.

19 138. DEFENDANTS owned, leased, managed and controlled the WINTON HOTEL and
20 created a condition or permitted a condition to exist that was harmful to health and obstructed the
21 free use of the WINTON HOTEL, so as to interfere with the comfortable enjoyment thereof.

22 139. DEFENDANT's violation of H&S §13260 harmed plaintiff. DEFENDANTS' conduct
23 was a substantial factor in causing Plaintiff the harm.

24 140. Further, DEFENDANTS' actions were willful, fraudulent, and malicious, and entitle
25 PLAINTIFFS to an award of punitive damages.

26
27 **EXEMPLARY DAMAGE ALLEGATION**

28 141. The allegations of the above paragraphs are incorporated herein by reference.

1 142. DEFENDANTS acted to cause injury or was despicable and undertaken with a willful
2 and knowing disregard of the rights or safety of others in that their persistent failure to maintain
3 minimal standards of habitability in the WINTON HOTEL – even after multiple, repeated
4 notices from PLAINTIFFS to do so – reflects awareness of the probable dangerous consequences
5 of their conduct, which they deliberately failed to avoid; additionally, their disregard is shown by
6 their retaliatory actions against PLAINTIFFS in blatant contravention of law and in a fashion
7 which caused PLAINTIFFS unnecessary and gratuitous hardship.

8 143. DEFENDANTS acted maliciously within the meaning of section 3294.

9 144. DEFENDANTS’ conduct was such as to intentionally misrepresent and conceal material
10 facts in a fashion intending to cause harm to PLAINTIFFS, in that DEFENDANTS represented
11 to PLAINTIFFS their intention to provide them clean, habitable units for the their use.

12 145. Additionally, DEFENDANTS acted fraudulently towards PLAINTIFFS’ payors in
13 misrepresenting the units as habitable when in fact they were not.

14 146. DEFENDANTS acted fraudulently within the meaning of section 3294.

15 147. DEFENDANTS’ conduct as detailed above was thus malicious, fraudulent, and
16 oppressive within the meaning of California Civil Code § 3294.

17 148. Accordingly, PLAINTIFFS should recover, in addition to all compensatory damages,
18 exemplary damages to deter similar conduct in the future, make an example of DEFENDANTS,
19 and punish DEFENDANTS.

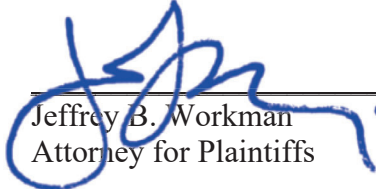
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21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFFS pray for judgment as follows:

- 23 A. For general and special damages according to proof;
24 B. For statutory damages;
25 C. That a civil penalty not to exceed Twenty-Five thousand Dollars (\$25,000.00) be
26 assessed against each Defendant pursuant to California Health and Safety Code
27 11581, et seq.;

- 1 D. That DEFENDANTS, and each of them, be ordered to abate all conditions which
2 cause the nuisance;
- 3 E. The recordation of an abstract of judgment in this case constitutes a prior lien that
4 may be held on the WINTON HOTEL by any Defendant to this action.
- 5 F. Prejudgment interest, unless duplicative of relief obtained under other causes of
6 action;
- 7 G. For attorney's fees pursuant to statute including but not limited to California Civil
8 Code §§ 1941.1, 1942.4, San Francisco Rent Ordinance 37.10(B);
- 9 H. That DEFENDANTS disgorge all wrongfully retained profits under Business and
10 Professions Code section 17200;
- 11 I. For punitive damages according to proof;
- 12 J. For any and all other relief which the Court deems proper and just.

13
14 Dated: December 9, 2024

15 
16 Jeffrey B. Workman
17 Attorney for Plaintiffs
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